UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

SCANSOFT, INC.	)	
Plaintiff,	))))	
v.	))	Civil Action No. 04-10353 PBS
VOICE SIGNAL TECHNOLOGIES, INC., LAURENCE S. GILLICK, ROBERT S. ROTH, JONATHAN P. YAMRON, and MANFRED G. GRABHERR	))))))	
Defendants.	))	

SCANSOFT, INC.'S SUR-REPLY IN SUPPORT OF ITS OPPOSITION TO DEFENDANT MANFRED G. GRABHERR'S MOTION FOR SUMMARY JUDGMENT

Dr. Grabherr's Reply in support of his motion for summary judgment ignores VST's late-produced evidence of misappropriation. Even with the limited discovery ScanSoft has been able to wrestle from VST, the evidence shows that (i) defendant Dr. Grabherr had access to ScanSoft's speech recognition trade secrets, including algorithms, techniques for developing speech recognition architecture, and source code for speech recognition, (ii) these trade secrets are equally applicable to speech recognition in both small (mobile) and large (PC-based) platforms, and (iii) Dr. Grabherr used these trade secrets in developing the ELVIS speech recognition engine. For these reasons, Dr. Grabherr's motion for summary judgment must be denied.

I.   **Dr. Grabherr's Work At L&H Involved Speech Recognition Technology For Use On All Platforms**

A.   **Dr. Grabherr Worked On Proprietary Speech Recognition Technology At L&H**

While at L&H, Dr. Grabherr worked on core speech recognition techniques, including

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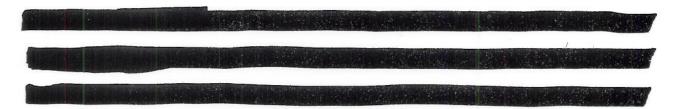
Exhibit A, Declaration of Francis Ganong ("Ganong Decl.") at ¶¶ 4-7. Dr. Grabherr confirmed during his deposition that his work at L&H was confidential. **Exhibit B**, Grabherr Tr. at 36-48 (admitting that he believed his modification of an L&H speech recognition algorithm was confidential) and 50-51 (acknowledging that he treated his work at L&H as confidential). This evidence demonstrates that, while at L&H, Dr. Grabherr learned speech recognition trade secrets vital to the successful development of speech recognition engines.

B.   **L&H's Speech Recognition Engine Technology Is Customizable To Various Platform Sizes**

Speech recognition engines contain technology that permits users to use spoken words or commands to control or direct functions on a computerized platform. **Exhibit C**, Declaration of Bruce Balentine Concerning Voice Activated Dialing Technology ¶ 16. The type of platform on which a speech recognition engine eventually runs is a consideration secondary to the actual development of the underlying technology. In fact, VST's ELVIS engine was not designed solely for small platform devices; neither were the speech recognition engines found in Voice Xpress or Dragon NaturallySpeaking designed solely for large platforms. These products could be customized to run on platforms of different sizes, while preserving their unique architectures. **Exhibit A**, Ganong Decl. at ¶ 3 ████████████████████

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Grabherr's work on the L&H Voice Xpress product directly related to his work on VST's

ELVIS speech recognition engine. Indeed, according to Dr. Ganong the proprietary techniques

he helped develop while at L&H were particularly useful for speech recognition engines running

on small platform environments. **Exhibit A**, Ganong Decl. at ¶ 5 (███████████████████████

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██)

and ¶ 6 (██

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████████████████████). Thus, there is no substantive distinction between

Grabherr's work at L&H and his work at VST; he learned proprietary speech recognition

techniques at L&H that were directly applicable to his work at VST. Dr. Grabherr's assertion to

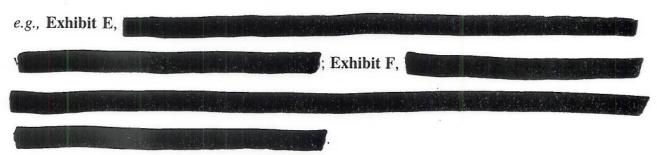the contrary is nothing more than a red herring designed to draw nonexistent distinctions in the

context of speech recognition engine development.

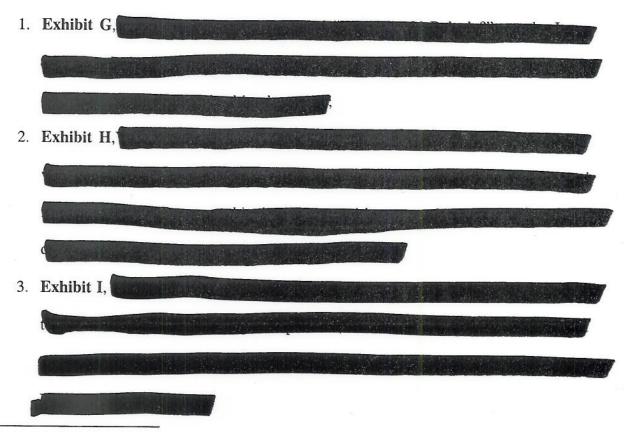## II.   Dr. Grabherr Used ScanSoft's Trade Secrets At VST

A.   The Individual Defendants Shared ScanSoft's Trade Secrets With Dr. Grabherr

Documents produced by VST show that Dr. Grabherr worked with the other individual

defendants, Laurence S. Gillick, Robert S. Roth, and Jonathan P. Yamron, on development of the

ELVIS speech recognition engine. Indeed, during the first year of his employment at VST, Dr.

Grabherr communicated with the other defendants, each of whom played a key role in the

development of ELVIS. **Exhibit D,** ██
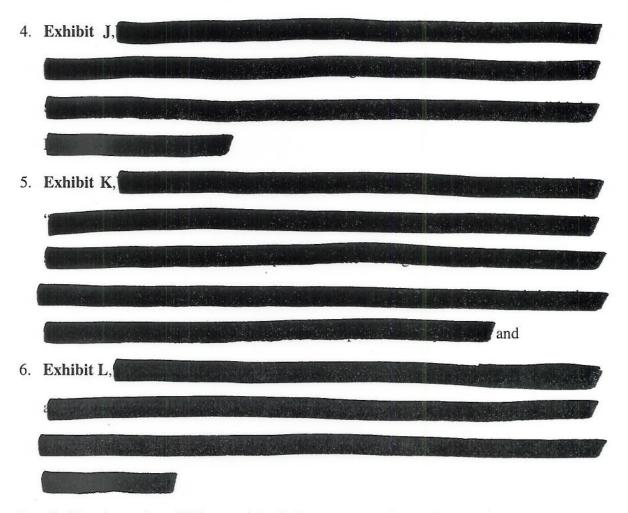
which assigns various ELVIS projects to VST employees, including Manfred Grabherr). Dr.

Grabherr directed research projects for the benefit of ELVIS and also gave lectures to other

researchers at VST regarding his particular contributions to that speech recognition engine. *See,*

e.g., **Exhibit E,** ██

██████████████████████████████; **Exhibit F,** ███████████████████████

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        In addition, VST documents show that Drs. Gillick, Roth, and Yamron worked on

Dragon's NaturallySpeaking product and shared with Dr. Grabherr and others at VST ScanSoft's

proprietary techniques: [1]

1. **Exhibit G,** ██

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2. **Exhibit H,** ██

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3. **Exhibit I,** ██

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[1] VST's wholesale redaction of names from these documents strongly suggests that it does not wish ScanSoft or this Court to know who at VST learned Dragon's proprietary information.

4. **Exhibit J,** ██████████████████████████████████

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5. **Exhibit K,** ██████████████████████████████████

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6. **Exhibit L,** ██████████████████████████████████

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Dr. Grabherr's work at VST gave him full access to and use of ScanSoft's proprietary trade secrets.

B.   Dr. Grabherr Applied ScanSoft's Trade Secrets To His Work At VST

Documentary and testimonial evidence demonstrates that Dr. Grabherr used ScanSoft's trade secrets during his first year of employment at VST in direct violation of his employment agreements and fiduciary obligations not to disclose proprietary trade secret information. *See, e.g.,* **Exhibit D,** ██████████████████████████████████

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Indeed, consistent with Dr. Ganong's sworn statements, Dr. Grabherr confirms that he used numerous speech recognition techniques at both L&H and VST that he considered to be confidential and proprietary and made modifications to the source code for each company's speech recognition engines by using proprietary techniques. Dr. Ganong notes that, ▮▮▮

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▮▮▮ **Exhibit A**, Ganong Decl. at ¶ 7. Dr. Grabherr admitted to the same work. **Exhibit B**, Grabherr Tr. 102-103(noting that he "wrote some code that used the language model [in ELVIS]" and confirming that he wrote some code at L&H that used language models) and 184-186 (testimony that Dr. Grabherr wrote code that builds the lexical tree in the VST ELVIS engine and L&H's Phoenix engine).

Similarly, Dr. Ganong states that ▮▮▮

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▮▮▮ **Exhibit A**, Ganong Decl. at ¶ 4. Dr. Grabherr affirmed that he had access to ScanSoft's speech recognition trade secrets in the form of algorithms, and performed exactly the same work at VST. **Exhibit B**, Grabherr Tr. at 36-48.

III. Dr. Grabherr Confuses Jeanne McCann's Lack of Knowledge With An Admission That He Did Not Steal Trade Secrets

Contrary to VST's argument in its Reply, Jeanne McCann never said that ScanSoft is unaware of trade secrets stolen by VST. Ms. McCann was not called as a 30(b)(6) technical witness, and her testimony makes clear that she does not have a technical understanding of ScanSoft's speech recognition technology. Indeed, Ms. McCann testified at her deposition that her expertise lies in business management, not in highly technical speech recognition techniques. **Exhibit M**, McCann Tr. at 5-8 (describing her educational and employment background,

including her MBA from Babson College and her management of the product development team

at a Wang Software subsidiary). Indeed, when asked technical questions, Ms. McCann stated

that her "background is not on the speech research side of speech recognition." *Id.* at 62-64.

Thus, when questioned about specific technologies, Ms. McCann repeatedly referred VST's

counsel to ScanSoft's research scientists for answers:

> Q. Okay. Is duration modeling used in any product that is sold by ScanSoft?
>
> MS. FLEMING: Objection.
>
> THE DEPONENT: I don't know. You would need to ask one of our researchers.
>
>   * * *
>
> Q. What do you understand the words "phoneme look ahead" to mean?
>
> A. I understand the words. Phoneme, it's a subpart of speech; look ahead, looking ahead of one phoneme to another. The phrase likely has meaning that a researcher would understand differently than my understanding of the two words.

Exhibit M, McCann Tr. at 63 and 70. Ms. McCann's testimony does nothing to undercut

ScanSoft's trade secret misappropriation claims.

CONCLUSION

For the reasons stated above, an issue of material fact exists regarding Dr. Grabherr's

access to and improper use of ScanSoft's speech recognition trade secrets, and thus his motion

for summary judgment should be denied.

Dated: July 21, 2005

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